

Tutorial 8, Mar 2, 2026

Contracts and Insurance

- Every contract has a list of definitions to ensure no issues arise with interpretation
- *Warranties* are smaller provisions within a larger contract
 - Breach of the warranty does not invalidate the whole contract
- Commercial general liability:
 - Indemnities:
 - * Liability for bodily injury or property damage (Section I.A.1)
 - * Liability for personal injury or advertising injury (Section I.B.1)
 - * Medical expenses for bodily injury (Section I.C.1)
 - * Property damage (Section I.D.1)
 - The coverage specifically excludes things like asbestos, pollution, etc, some of which E&O covers.
 - Terrorism and war are specifically excluded like a force majeure clause
- Errors and Omissions:
 - Indemnities:
 - * Losses resulting from asbestos (Section 2.1)
 - * Loss of earnings from court attendance (section 2.2)
 - * Legal fees from disciplinary proceedings (section 2.3)
 - * Losses from joint ventures (section 2.4)
 - * Losses from replacing lost documents (section 2.5)
 - * Costs from mitigating a wrongful act (section 2.6)
 - * Losses resulting from certain types of pollution (section 2.7)
 - * Losses resulting from wrongful acts of specialist consultants (section 2.8)
 - E&O mostly covers non-personal losses resulting from mistakes or unforeseen circumstances during work, as opposed to CGL which mostly concerns personal losses
 - The asbestos section specifically excludes losses due to personal injury from asbestos release, so it does not overlap with CGL's coverage.
 - Section 4.2 specifically excludes bodily injury and property damage from coverage, which is covered by CGL instead.
 - Section 4.3 excludes losses resulting from deliberately fraudulent acts
 - Similar to CGL war and terrorism are also excluded
- When drafting contracts, the main objective is to allocate risk – consider “what if” scenarios to minimize the likelihood of disputes
- Case: *Bowman v. Martineau*, 2020 ONCA 330
 - The buyers purchased a house that had ongoing water damage, which was not disclosed properly by the real estate agent, so the buyers are suing the agent to claim damages
 - The main issue is how the damages should be calculated
 - The buyers could not claim full damages for the cost of the water damage, since the real estate agent did not cause the water damage; instead the damage should be calculated based on the reduction in value of the house, since without the negligence of the agent the buyers would have ended up with a house with higher value, i.e. the damages are the difference in the market value of a house without water damage vs the house with water damage
 - * The negligence of the agent caused the buyers to enter into the contract, not the water damage itself
 - * This relates to the issue of causation for analysis of negligence